

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/759728  
Applicant : Elliot Schwartz  
Filed : 01/11/2001  
TC/A.U. : 2131  
Examiner : MOORTHY, ARAVIND K  
Confirmation No. : 2453  
Docket No. : Digi-P001  
Customer No. : 40418

**COMMUNICATED VIA EFS TO USPTO on 13 November 2008**

APPLICATION FOR PATENT TERM ADJUSTMENT

Commissioner for Patents:

Applicant files herewith a request for reconsideration of the patent term adjustment indicated in the notice of allowance.

This communication contains 3 pages total.

Applicant submits that this application for patent term adjustment is being filed no later than the payment of the issue fee and not earlier than the date of mailing of the notice of allowance.

Applicant is paying concurrent with this filing the fee set forth in § 1.18(e).

Applicant hereby submits this statement of facts involved:

(i) The correct patent term adjustment (PTA) is 917 days.

The basis or bases for the adjustment is under 37 CFR § 1.702(a) and 37 CFR § 1.702(b).

(ii) Applicant seeks adjustment based on relevant dates 12/18/2007 and 11/05/2008. The patent is entitled to a PTA of 917 days. On 12/18/2007 a first notice of allowance was issued with a PTA of 594 days. Subsequent to the first notice of allowance the application was yanked back into prosecution. After further prosecution a second notice of allowance was issued 323 days later on 11/05/2008. The second notice of allowance had a PTA of 503 days which is less than the original notice of allowance. The 323 day delay was entirely within USPTO control. Applicant therefore filed this Application for Patent Term Adjustment.

(iii) The patent is not subject to a terminal disclaimer.

(iv) Per 37 CFR § 1.704 Applicant responded after three months for four Office Actions.

CONCLUSION

Applicant submits that the PTA should be 917 days.

Applicant respectfully requests reconsideration of the patent term adjustment.

Communication via cleartext email is authorized.

Respectfully submitted,

Heimlich Law

11/13/2008

/Alan Heimlich/

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Date

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